

Case: 2:22-mc-51159

Assigned To : Cox, Sean F.

Assign. Date : 7/12/2022

Description: IN RE: Annie Hester (da)

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UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN AND NORTHERN DIVISION

“Application Pursuant To Court Order Seeking Leave To File”

Pursuant to 28 U.S.C. § 636(b)(1)(B) E.D. Mich. L.R. 72.1(b)(3), and by order of Reference (Dkt. 3,) the above-entitled case was referred to this Magistrate for general case management. This matter is before the court on Plaintiff's application for appointment of counsel. (Dkt. 2.) Plaintiff has been granted the ability to proceed in forma pauperis (IFP) in this case. (Dkt. 9.) Under 28 U.S.C. § 1915(e), The “Court may request an attorney to represent any person unable to employ counsel.” However, “[t]here is no constitutional right to counsel in federal civil case.” In addition, this section “does not authorize the federal court to make coercive appointment of counsel” to represent indigent civil litigants.

“The appointment of counsel to civil litigants is a decision left to the sound discretion of the district, and will be overturned only when the denial of counsel results in “fundamental unfairness impinging on due process rights.” Factors to be considered in determining whether to grant or deny the motion include her ability to present the claims, the complexity of the case, the merits of the case, and the pro se litigants prior efforts to retain counsel.

Certifications

I hereby certify that the above is True from the original copy.

Further, I hereby certify that the Order Granting Application to proceed without prepayment of fees dated; 11/3/2008, and the Order Denying Application for Appointment of counsel dated; 11/3/2008, which were, Electronically filed this date and Electronically Served on the Commissioner of Social Security and Served on Annie M. Hester by first class mail at 64 Menlo Park Belleville MI 48111 Date: November 3, 2008, which were submitted and filed on June 23, 2022, (in Miscellaneous Case 2:22-MC-51097), are True copies of the originals.

Sign: *Annie M. Hester* Date: July 12, 2022
ANNIE M. HESTER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANNIE M. HESTER,

Plaintiff,

v.

Case No. 19-mc-50526
Honorable Linda V. Parker

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**ORDER (1) SUMMARILY DISMISSING PLAINTIFF'S COMPLAINT; (2)
SETTING CONDITIONS ON FUTURE FILINGS; (3) AND DISMISSING
ACTION**

On April 5, 2019, Plaintiff filed a Complaint challenging the Commissioner of Social Security's ("Commissioner") denial of her application for social security benefits. In 2009, the Honorable Thomas L. Ludington barred Plaintiff from filing actions against the Commissioner in this District unless she receives written permission from the court. *See Hester v. Comm'r of Soc. Sec.*, No. 08-14575 (E.D. Mich. Sept. 2, 2009), ECF No. 15. Plaintiff had already filed three actions against the Commissioner related to the same decision on her application for social security benefits and Judge Ludington explained that the court lacked subject matter jurisdiction over such claims and that they were barred by res judicata. Undeterred by Judge Ludington's order, Plaintiff has repeatedly attempted to relitigate the Commissioner's decision, filing 13 cases against the Commissioner in

2014, 6 cases in 2015, 1 case in 2015, 3 cases in 2017, 3 cases in 2018, and 1 case thus far in 2019.

In her most recent filing, Plaintiff raises the same grievances she previously asserted. As such, and as other judges have repeatedly stated, the Court lacks subject matter jurisdiction over her claims and they are barred by res judicata. The Court, therefore, is summarily dismissing Plaintiff's Complaint and closing this action. To prevent the unnecessary utilization of the court's judicial resources, this Court is amending Judge Ludington's order as follows:

IT IS ORDERED that Plaintiff is enjoined from filing any further actions against the Commissioner of Social Security in the Eastern District of Michigan unless she receives written permission from the Chief Judge of the Court.

IT IS FURTHER ORDERED that any future filings shall be captioned "Application Pursuant to Court Order Seeking Leave to File," and Plaintiff must affix a copy of this order and Judge Ludington's September 2, 2009 order to that application.

IT IS FURTHER ORDERED that in order to obtain permission, Plaintiff shall certify (1) that the claim or claims she wishes to present are new claims never before raised and disposed of by any federal court and (2) that her action is taken in good faith and that the claims raised are not frivolous or malicious.

IT IS FURTHER ORDERED that failure to comply strictly with the terms of this order will be grounds for summarily denying leave to file and that filings considered malicious, frivolous, or brought in bad faith may be grounds for civil contempt proceedings. No further proceedings shall take place in this court, nor shall any other filings be accepted, until the Chief Judge has reviewed the application and the record to determine whether Plaintiff's filing presents a colorable claim.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 21, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, May 21, 2019, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANNIE M. HESTER,

Plaintiff,

v.

Case Number 08-14575-BC
Honorable Thomas L. Ludington

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING
PLAINTIFF'S OBJECTIONS, GRANTING DEFENDANT'S MOTION TO DISMISS,
DISMISSING COMPLAINT FOR LACK OF JURISDICTION, BARRING PLAINTIFF
FROM FILING ANY FURTHER LAWSUITS IN THIS DISTRICT AGAINST THE
COMMISSIONER WITHOUT WRITTEN PERMISSION OF A JUDGE IN THIS
DISTRICT, AND DIRECTING THE CLERK OF COURT TO RETAIN A COPY OF
THIS ORDER AND ATTACH IT TO ANY SUBSEQUENT LAWSUIT FILED BY
PLAINTIFF AGAINST THE COMMISSIONER**

Plaintiff Annie M. Hester ("Plaintiff") filed the instant complaint [Dkt. # 1] against Defendant Commissioner of Social Security ("Commissioner") on October 28, 2008. Plaintiff has previously filed three actions against the Commissioner in the Eastern District of Michigan. *See Hester v. Comm'r of Soc. Sec.*, No. 01-71352 (filed Apr. 13, 2001); No. 04-71353 (filed Apr. 30, 2004); No. 08-10113 (filed Jan. 8, 2008). The instant action, in addition to the past three actions, arise out of the Commissioner's denial of disability benefits to Plaintiff. The instant action was referred to Magistrate Judge Charles E. Binder for determination of the non-dispositive issues, and for a report and recommendation.

On February 4, 2009, the Commissioner filed a motion to dismiss [Dkt. # 10], on the basis of res judicata as to the issue of subject matter jurisdiction. In the motion, the Commissioner also sought relief barring Plaintiff from filing further actions against the Commissioner without leave of

court. On April 21, 2009, the magistrate judge issued a report and recommendation, recommending that the Court grant the Commissioner's motion to dismiss and bar Plaintiff from filing further actions against the Commissioner without leave of court. The magistrate judge explained that the court has previously determined that it lacks subject matter jurisdiction over Plaintiff's claims because there was no final decision of the Commissioner to review. *See Hester*, No. 08-10113 (Aug. 29, 2008). Additionally, the magistrate judge concluded that Plaintiff has not raised any colorable constitutional claims.

On May 7, 2009, Plaintiff filed objections to the report and recommendation [Dkt. # 14]. However, Plaintiff's objections do not address the issues of res judicata, subject matter jurisdiction, the existence of any constitutional claims, or the recommendation to bar Plaintiff from filing further actions against the Commissioner without leave of court. Rather, Plaintiff restates the history of her case and various decisions of the Commissioner and the courts. Thus, there is no basis on which to reject any portion of the report and recommendation of the magistrate judge, and it will be adopted.

Accordingly, it is **ORDERED** that the report and recommendation [Dkt. # 13] is **ADOPTED**, and that Plaintiff's objections to the report and recommendation [Dkt. # 14] are **OVERRULED**.

It is further **ORDERED** that Defendant Commissioner of Social Security's motion to dismiss [Dkt. # 10] is **GRANTED**.

It is further **ORDERED** that the complaint [Dkt. # 1] is **DISMISSED FOR LACK OF JURISDICTION**.

It Is further **ORDERED** that Plaintiff is **BARRED** from filing any further actions against the Commissioner of Social Security in this district unless she obtains the written permission of a judge of this district.

It is further **ORDERED** that the Clerk of Court is **DIRECTED** to retain a copy of this order and attach it to the file of any subsequent action filed by Plaintiff against the Commissioner of Social Security.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: September 2, 2009

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| <p style="text-align: center;"><u>PROOF OF SERVICE</u></p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 2, 2009.</p> <p style="text-align: center;"><u>s/Tracy A. Jacobs</u> TRACY A. JACOBS</p> |
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